

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.) 3:09-CR-00210-B(1)
)
JESSE WILLIAM MCGRAW,)
)
Defendant.)

MOTION FOR APPOINTMENT OF NEW COUNSEL
BEFORE THE HONORABLE JANE J. BOYLE
UNITED STATES DISTRICT JUDGE
MARCH 25, 2010

A P P E A R A N C E S

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**SHAWNIE ARCHULETA, CSR/CRR
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1 (In open court.)

2 THE COURT: Good morning. For the record,
3 this is Criminal Case 3:09-CR-210-B, United States
4 v. Jesse William McGraw. We are here this morning
5 on his motion for appointment of new counsel.

6 Let's go ahead and begin by having the
7 parties introduce themselves, and I will start with
8 the government.

9 MS. HEATH: Your Honor, Candy Heath and
10 Paul Yanowitch here for the government.

11 THE COURT: Thank you.

12 MR. NICHOLSON: Good morning, Your Honor.
13 John Nicholson, court-appointed counsel for
14 Mr. McGraw. We are present in court and ready to
15 proceed.

16 THE COURT: Thank you very much. I have
17 read through the papers and, Mr. Nicholson, I think
18 since you are still counsel of record I will ask you
19 to go ahead and give me a brief synopsis of what you
20 see and what your position is.

21 MR. NICHOLSON: Yes, Your Honor.

22 THE COURT: Approach the lectern, please.

23 MR. NICHOLSON: Your Honor, I asked the
24 Court for this hearing in hopes of resolving how
25 Mr. McGraw chooses to proceed in this case in regard

1 to his counsel.

2 As the Court is aware, Mr. McGraw is very
3 dissatisfied with the Public Defender's Office, in
4 general, and with me, in particular. And what I am
5 hoping we can accomplish in the hearing today is
6 that all parties to the action will know how
7 Mr. McGraw chooses to proceed; does he want to
8 represent himself, either with or without standby
9 counsel and have us dismissed? Does Mr. McGraw want
10 to try to hire a lawyer that he would like better
11 than me? Does he want to give the Court reasons why
12 he thinks the Court ought to dismiss or relieve our
13 office and appoint somebody else?

14 As the Court is aware, Mr. McGraw filed a
15 grievance against me with the State Bar. I sent him
16 the form to do so. As a matter of course, whenever
17 any client says anything that even hints an ethics
18 complaint or a grievance, I send them the form. I
19 don't think the fact that a person is in custody
20 should inhibit or constrict their ability to file a
21 complaint like that. I sent him a form and he filed
22 it and it's been dismissed.

23 But in light of that, I feel I ought to
24 tell the Court that I don't think that our office,
25 in general, and me, in particular, can continue to

1 represent Mr. McGraw.

2 And I say that with a lot of reluctance,
3 for a couple of reasons: Number one, if word gets
4 out that a person can get rid of their public
5 defender just by filing a grievance, then it is
6 going to happen. It won't happen much. These kinds
7 of issues don't come up that much, maybe 1 or 2
8 percent of the time. I think maybe this is the
9 second one I have had in your court in
10 four-and-a-half years. But if word gets around,
11 then 1 or 2 percent of the time folks are going to
12 do that, and that's not something I think ought to
13 be encouraged.

14 And another reason I am reluctant to ask
15 the Court to withdraw from the case is, I am not
16 confident that it's going to help anything.

17 I can think of three other instances where
18 I have had to ask the Court for permission to
19 withdraw from a case for a reason similar to this
20 one, and those three clients weren't happy with the
21 replacement lawyers, either. The first thing they
22 said was, the replacement isn't better than
23 Nicholson, I want another lawyer. One guy went
24 through four lawyers.

25 With that said and with that reluctance in

1 mind, the fact of the matter is that, even though
2 the Bar dismissed the grievance, Mr. McGraw and I
3 are litigants right now. He has the right to appeal
4 the State Bar's denial or dismissal of his
5 grievance. I believe he is going to file or has
6 filed one against Mr. Anderson. I just don't see
7 how the office, in general, or I, in particular, can
8 advocate for someone with whom we are presently an
9 adversary litigant.

10 Now, if the Court disagrees and says,
11 Nicholson, you stay on. I will continue to
12 represent Mr. McGraw without any complaints, and I
13 will do the best that I can. I just don't think
14 that that's something, from my perspective, that is
15 something that can or should happen at this point.

16 THE COURT: Well, I appreciate that. That
17 clarifies where you are coming from, and then I
18 would like to hear from Mr. McGraw. I want to see
19 if the government has anything that they want to add
20 to any of this.

21 MS. HEATH: Your Honor, I understand and
22 agree with Mr. Nicholson's position, that it makes
23 it very difficult for him to continue to represent
24 Mr. McGraw in a situation where there are potential
25 adversaries in another litigation. I understand

1 that.

2 I do agree with his concern and also
3 express my office's concern with allowing defendants
4 to woefully get rid of their attorneys when the
5 attorneys that have been appointed to them are
6 excellent attorneys and have worked diligently to
7 get them the best deal possible in the case.

8 So I do have some concern that this will
9 spread like a wildfire among the defendants and that
10 they will start filing grievances against their
11 attorneys to try to get rid of them. I just think
12 that's a bad precedent to set but, you know, I don't
13 want to see this Court punish Mr. Nicholson and
14 require that he continue to represent Mr. McGraw.
15 And then that causes problems on the appeal end for
16 any continued representation on his part.

17 So I join with Mr. Nicholson's request,
18 that some consideration be made to determine what
19 Mr. McGraw's future attorney or future
20 representation should be like.

21 THE COURT: Thank you very much.

22 Mr. McGraw, let's hear from you. Come up
23 on here.

24 THE DEFENDANT: Thank you, Your Honor.

25 THE COURT: Good morning.

1 THE DEFENDANT: Good morning. First and
2 foremost, I wanted to say that I believe that it is
3 the defendant's right to an effective counsel.

4 One issue that I feel that I have that is
5 necessary is that I believe that Mr. Nicholson does
6 not possess the proper technical knowledge or skill
7 or experience to represent me for my case.

8 The technicalities of it is beyond your --
9 your -- your common Internet case, excuse me. It's
10 very complicated. And I also need somebody who is,
11 in a sense, like-minded, who understands the
12 technical knowledge that I would be able to have
13 a -- you know, an effective attorney who would
14 understand that.

15 Recently I felt that things were going
16 downhill. And Mr. Nicholson had told me that it
17 would maybe be in my best interest to have my
18 grandmother flown out by the U.S. Marshals here to
19 testify against me, to betray me, to be mentally
20 incompetent, as a person who had been off of my
21 medication for some time. However, I don't take
22 medication, and I haven't, and I am not incompetent.

23 THE COURT: So with those comments, I am
24 assuming you are waiving your attorney-client
25 privilege by talking about what Mr. Nicholson is

1 telling you?

2 You have a right to attorney-client
3 privilege. You don't have to tell me what went on
4 between the two of you. That's a little difficult
5 here, because I need to know why you don't want him
6 as your lawyer, but from what you have just said, it
7 sounds as though you have opened up some of the
8 conversations between the two of you.

9 THE DEFENDANT: I will waive that, yes,
10 ma'am.

11 THE COURT: Go ahead.

12 THE DEFENDANT: There is one issue I'm
13 also having is I feel that the detention order was
14 not fair, and I have been begging for a bond motion,
15 a PR motion.

16 I do realize that some things will weigh
17 in favor, such as new evidence, and new evidence
18 definitely came up as my wife's worsening health
19 condition. She has Type I diabetes, myelitis, and
20 she is literally dying. I have an almost
21 two-year-old daughter, and I see DOJ's letting people
22 on child pornography cases and child molestation
23 cases out on PR, posttrial bonds, and I haven't been
24 able to get that.

25 I've been saying that this PR bond motion

1 means a lot to me for my wife's sake. And he says
2 that he won't file it because, if I do, he risks
3 endangerment of his reputation in the honorable
4 court, and I can understand that. But also I was
5 under the impression that the magistrate's detention
6 order can be overruled by a district judge, yes and
7 no.

8 He said that he had 570 labor hours that
9 he had been working on my case. I have noticed a
10 lot of fallacies, and I brought it up to his
11 attention in many letters, and I really beg to
12 differ. I don't see this happening.

13 He also tells me that the FBI's testimony
14 that was given at the detention hearing -- this is
15 really minimal significance relating to the NASA,
16 the Dallas Police Department, and the names that
17 were originally registered to me under my Social
18 Security number. However, I find those things not
19 to be true, and I have the evidence pertaining to
20 those.

21 He also convinced me that if I did not
22 take the government's plea agreement for a six- to
23 eight-year cap or to give up my belongings, that I
24 could very well be looking at 15 to 20 years if the
25 government decides to stack those indictments.

1 However, I feel that to be a kind of manipulation.

2 THE COURT: Do you believe that that
3 comment is untrue?

4 THE DEFENDANT: I believe that if an
5 attorney was to say, well, because your points are
6 so high, if you decide to burn bridges with the
7 government, it's not going to be weighing in favor
8 of you. You could very well be looking at 15 to 20
9 years if you don't plead guilty; however, I would
10 like to take it to trial and have my chances.

11 THE COURT: Anything else?

12 THE DEFENDANT: Just one thing. I didn't
13 feel it was necessary for certain things, for
14 Nicholson to call my family, specifically my mother,
15 my wife, about saying that I was cussing at him or
16 in a sense that he was tattling on me or telling my
17 wife that the grievance that I had filed had been
18 denied. I didn't feel it was necessarily a part of
19 my case, and it kind of seemed like he was kind of
20 tattling, to me.

21 Also, as far as the bond motion goes, I
22 had spoke to Mr. Anderson, and he said that if I had
23 filed -- if I went ahead and filed the bond motion,
24 which I have every right to under Estelle v. Gamble,
25 that they would withdraw from my being my attorneys

1 if I filed the PR bond.

2 THE COURT: Okay. How much time have you
3 spent with Mr. Nicholson? Sounds like you have had
4 quite a bit of conversation with him and some
5 meetings with him.

6 THE DEFENDANT: Almost nine months, I
7 believe.

8 THE COURT: Nine months and pretty regular
9 contact.

10 THE DEFENDANT: Not -- well, I don't
11 necessarily know what regular is. I haven't seen
12 him for a while.

13 THE COURT: What does it mean to you?

14 THE DEFENDANT: I would like to be able to
15 see him more often and respond to my letters more
16 frequently.

17 THE COURT: All right. Otherwise, it
18 sounds as though you've got issues with regard to
19 his not being like-minded with you about the
20 strategy of handling the case; is that correct?

21 THE DEFENDANT: In a nutshell, yes, ma'am.

22 THE COURT: Okay. And you are concerned
23 about his technical computer skills?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: But you're indicating that he

1 has computer skills, just not at the level that you
2 have?

3 THE DEFENDANT: The level that I need,
4 necessarily.

5 THE COURT: And you're concerned about the
6 detention order which happened after a hearing; is
7 that right?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: And you want him to move to
10 overturn that?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: Okay. And you have some
13 concerns about the FBI may not be giving correct
14 information or something like that?

15 THE DEFENDANT: Yes. I believe that -- I
16 am under the impression that certain elements that
17 was mentioned at the detention hearing was the
18 influence to get me here.

19 THE COURT: And the conversations he's had
20 with your wife about interactions that you have had
21 with him?

22 THE DEFENDANT: Would you clarify, please?

23 THE COURT: You are the one that told me
24 that he called your wife and talked to her or your
25 mother or both about --

1 THE DEFENDANT: I have given him
2 permission to speak to my family, but certain things
3 I don't feel are necessary, as having to tell my
4 wife that -- that I -- that the grievance was
5 dismissed. I don't see the point. Or calling my
6 mother to tell her I am being very bad and I'm
7 basically cussing at him, yes, ma'am.

8 THE COURT: All right. Now, what is your
9 position as to whether or not you can work with him?
10 What's the problem other than that? Is there some
11 problem? He's a competent lawyer. He may not have
12 your computer skills. I have been watching
13 Mr. Nicholson for years. He is one of better --
14 well, he and all of the Public Defender's are some
15 of the best that we have that come down here.

16 They're experienced, they try cases on a
17 regular basis. They know the guidelines inside and
18 out. So other than him not agreeing with your
19 strategy and doing some things that irritated you
20 and the computer issues, I'm trying to figure out
21 how this is affecting your ability to get Sixth
22 Amendment competent representation.

23 THE DEFENDANT: I do believe that his
24 decisions should ultimately weigh in my best
25 interests. And if I feel that he is being

1 ineffective, that is all I ask.

2 THE COURT: All right. I would like to go
3 ahead and hear from, Mr. Nicholson, now that we have
4 heard from you. Thank you very much, Mr. McGraw, if
5 you will take a seat.

6 Mr. Nicholson, now that you may have had a
7 chance to hear more than you heard before, if you
8 would like to respond, I would like to give you an
9 opportunity to on the record.

10 MR. NICHOLSON: Just briefly, Your Honor,
11 and I'm going to have to be cautious because
12 Mr. McGraw has the right and the capacity to waive
13 confidential communication; I don't.

14 But I will say that -- I would say that my
15 personal level of technological knowledge and skill
16 as it comes to computers is about average, maybe a
17 little more. But we do have what I consider to be a
18 very qualified expert on computers in our office,
19 our Chief Investigator, Dan James, who has spent
20 hundreds and hundreds and hundreds of hours on this
21 case. So I feel very confidently that I can rely
22 upon him to fill in the pieces that I might not know
23 because of my just moderate ability.

24 In terms of detention motions, if I feel
25 that a motion is arguably supported by the facts and

1 arguably supported by the law and in my client's
2 best interests, then I file the motion. If I don't
3 think it meets those three criteria, then I don't
4 file it, no matter how much the client may want me
5 to.

6 It's my opinion that an attorney's
7 credibility before the Court is very important for
8 all of his clients. And if the Court is thinking,
9 well, Nicholson makes a good argument, the
10 prosecutor does, too, this could really go either
11 way, I don't want a Court to think, well, you know,
12 maybe Nicholson doesn't really believe this, or,
13 maybe his arguments aren't that sound because I
14 remember just last week he made this motion that he
15 knew I was going to deny, and it wasn't supported by
16 the facts; he really just kind of let's his client
17 tell him what to do. I try to avoid that; not for
18 my personal reputation, as it would be important for
19 me, but for the importance of my clients.

20 And if clients tell me not to call family
21 members, I don't call them. In fact, unless a
22 client specifically asks me to call family members,
23 I don't do it. When a family member calls me or if
24 I call a family member, I am not able to go to the
25 prison and kind of have a preview with my client as

1 to everything that I am going to say. I kind of
2 have to go by the parameters that the client has
3 set, and I do that in every case.

4 So I suppose that's all I have to say,
5 although Mr. Anderson may want to address this. I
6 have never told a client that if a client filed a
7 pro se motion I would withdraw from representing the
8 client. I have never said that.

9 What I have said is that, when a client is
10 represented by an attorney, courts have no
11 obligation to review, read, or even acknowledge a
12 pro se motion filed by a defendant, because the
13 defendant is not pro se. And if the defendant wants
14 to force the Court to acknowledge the motions filed
15 by the defendant, then the defendant needs to go
16 pro se; I have said that. But I have never told a
17 client, well, you better not submit anything to the
18 judge, because, if you do, I'm going to withdraw. I
19 have never done that, and I don't believe anyone in
20 our office has ever said or done that.

21 That's all I have, Judge.

22 THE COURT: Thank you, Mr. Nicholson.

23 Mr. McGraw, come up.

24 Mr. Anderson, did you have something? I
25 would be glad to let you speak if you would like to,

1 as the head of the office.

2 MR. ANDERSON: Just very quickly, Your
3 Honor. Almost every case that comes into our office
4 gets passed about the first three weeks, so
5 therefore it has the potential for going to trial.
6 I not only have a lead attorney on that case, I have
7 a lead investigator, a paralegal. If I think the
8 case is going to involve some unique legal issues, I
9 appoint one of our appellate attorneys on it.

10 On this particular case, while I may not
11 have sat in on every strategy session, I probably
12 sat in on 90 percent of the strategy sessions when
13 the team met to discuss what the particular issues
14 were and how the approach is. I have also been out
15 to visit Mr. McGraw twice on this case.

16 In terms of advising him the same thing
17 that Mr. Nicholson did, that hybrid representation
18 is not likely to get the attention of the Court, I
19 went -- we also went forward and set out the reasons
20 for, A, why we believe that the research that we
21 have done on the case and, more particularly, the
22 research that Dan James has done on the case, does
23 not necessarily prompt me to go out and hire another
24 computer expert just because it doesn't fit
25 Mr. McGraw's theory of what the case should be.

1 THE COURT: And Dan James is your computer
2 expert?

3 MR. ANDERSON: Dan James is our computer
4 expert, and I look to him for advice. If he says,
5 this is beyond my competence, or, this is beyond my
6 comfort level, then obviously, fortunately, our
7 office does have the resources to go outside and
8 look for those individuals.

9 In this particular case, we believe that
10 we have, based upon the discovery that we have done,
11 the extracurricular work we have done on the case,
12 have an idea, a very good idea of what the sequence
13 of events were and what the situation is.

14 Mr. McGraw also has said that I was
15 somewhat dismissive, and I will actually plead
16 guilty to that, Your Honor. I was less than
17 impressed with some of the advice he was getting at
18 the detention center, and I probably came across as
19 a bit dismissive in the interview, and for that I
20 apologize to him and the Court. But I don't think
21 there is anything about the advice that
22 Mr. Nicholson has given or the work that has been
23 put into this case that I have to or will apologize
24 for.

25 THE COURT: Thank you very much,

1 Mr. Anderson.

2 Ms. Heath, why don't you, because this
3 will all be on the same record, just give me a brief
4 synopsis of the computer aspects of this case. You
5 don't have to tell me about the technical parts,
6 just the charge and how the computers enter into it.

7 MS. HEATH: The charge at this time is
8 transmitting a code, program or command to a
9 computer. There are a number of computers,
10 approximately 14 to 16 computers that were located
11 at the Carrell Clinic, which we are alleging that
12 Mr. McGraw accessed, transmitted codes, commands,
13 programs, et cetera.

14 There are two specific computers --
15 actually, there are four computers that we have at
16 least imaged, and then we have gotten forensic
17 information from the hospital because they did their
18 own remediation of computers. So as a remediation,
19 they are searching for the different malicious or
20 Malware that may be located in the computers or all
21 of the computers where the antivirus software was
22 turned off, and they were identifying that for us.

23 We have reports from their processes. We
24 have the actual images of the hard drives, other
25 digital evidence that may be involved. We've got

1 records back from Photobucket, from LogMeIn, from
2 other places where Mr. McGraw had accounts and that
3 he used, so that would be technically electronic
4 evidence, although not computer evidence.

5 It's not a large case; it's a very compact
6 case with regard to the computer evidence. We've
7 had much bigger cases, so this is not one that is
8 voluminous in that nature. It is technical in
9 having to go in and analyze the data that we have,
10 but it's not voluminous in the number of computers.

11 THE COURT: Thank you very much.

12 Mr. McGraw, come on back up here.

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: Mr. McGraw, probably the
15 easiest thing in the world for me to do would be to
16 say, all right, let's start all over again. The
17 problem with that is that I have to follow the law,
18 and the law is very clear that you have a Sixth
19 Amendment right to competent counsel. That's one of
20 our important constitutional rights. But you don't,
21 in any way, have a right to choose your
22 court-appointed counsel or to pick their strategy.

23 And short of that, if you don't like that
24 system, you can choose to represent yourself, which
25 I certainly hope you wouldn't do here. I always try

1 to make sure defendants understand the importance of
2 not doing that, and sometimes they still choose to
3 do it. But it doesn't sound like you are even
4 suggesting that you want to represent yourself. Am
5 I correct about that?

6 THE DEFENDANT: That is correct, Your
7 Honor.

8 THE COURT: And so the advice that you got
9 about not filing your own motion is absolutely
10 correct. The Court -- you have no right to what we
11 call hybrid representation. We can't have the
12 lawyer and the client sending various motions, so
13 that's correct. And I'm glad to hear that you are
14 not wanting to represent yourself.

15 So what I have to look for is whether or
16 not this relationship is broken down, whether there
17 is some prejudice to you, whether there's such a
18 conflict that you can't operate, and I don't see
19 that here.

20 What I see is that you don't agree with
21 his strategy, you don't like some of the
22 conversations that you have had. Perhaps there's
23 been some aggression between the two of you, but
24 none of that is abnormal and none of that
25 disqualifies Mr. Nicholson.

1 What I'm hearing now from him and from
2 Mr. Anderson, which I find credible, is that they
3 have done everything they can, which is exactly on
4 par with what they always do in their cases.

5 You have the opportunity to have someone
6 who has this expertise, perhaps that you have,
7 that's looking at the case, as well, an investigator
8 and a lawyer, as well as an assistant lawyer. And
9 these gentlemen and ladies that work for the Public
10 Defender's Office are just about pretty much the
11 most experienced lawyers that we get.

12 So let me, just for the record, cite some
13 of the cases in this regard. And you can go ahead
14 and take a seat while I'm getting my papers open
15 here.

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: Under our Criminal Justice
18 Act, a criminal defendant is entitled to
19 representation at every stage of the proceedings,
20 from initial appearance through appeal.

21 The Court may, in its discretion and in
22 the interests of justice, substitute one appointed
23 counsel for another at any stage of the proceedings.
24 But court-appointed counsel shall not be relieved
25 except in the event of incompatibility between the

1 attorney and client or other most pressing
2 circumstances. And right now I am citing to an
3 unpublished 5th Circuit case, U.S. v. Delrosario,
4 and it can be found at Westlaw, 2001 Westlaw 85906
5 out of the 5th Circuit, and it is citing to United
6 States v. Trevino, 992 F.2d 64 at 65, 5th Circuit
7 1993.

8 I haven't heard, as in this Delrosario
9 case, sufficient evidence of incompatibility or
10 really much at all as far as the relationship
11 between Mr. Nicholson and Mr. McGraw other than the
12 fact that they may disagree on strategy and that
13 Mr. McGraw is not happy with some of the
14 conversations they have had and some of the
15 conversations that Mr. Nicholson has had with his
16 family. It doesn't rise to the level of the
17 incompatibility that requires that the Court change
18 counsel. Of course it would set a very poor
19 precedent if the Court were to do this as a matter
20 of course every time a defendant came forward.

21 Again, some of the cases on this: A
22 defendant is entitled to counsel capable of
23 rendering competent, meaningful assistance in the
24 preparation of the trial and the pending charges,
25 including appropriate evaluation and advice with

1 reference to a plea of guilty. A defendant is
2 entitled to an attorney who will consider his views
3 and seek to accommodate, but has no right to an
4 attorney who will docilely do as he is told. Every
5 defendant is entitled to assistance of counsel
6 dedicated to the proposition and capable assuring
7 that the prosecution's case shall be presented in
8 conformity with the Constitution and the Rules of
9 Evidence. No defendant has a right to more. That's
10 McQueen v. Blackburn out of the 5th Circuit, 755
11 F.2d 1174, 5th Circuit 1985.

12 And again, the Court is required to
13 relieve appointed counsel only upon a showing of a
14 conflict of interest, which there has not been here,
15 or other most pressing circumstances, or that the
16 interest of justice otherwise requires relief of
17 counsel. And none of that has been established in
18 this case.

19 And finally, on the proposition that the
20 Sixth Amendment does not afford a defendant absolute
21 and unqualified right to counsel of choice is U.S.
22 v. Brown, 591 F.2d 307, 5th Circuit 1979, at pages
23 310 and 311.

24 And for that reason, Mr. McGraw, I am
25 going to deny your motion. I have heard sufficient

1 information from Mr. Anderson and Mr. Nicholson to
2 believe that you are getting excellent advice,
3 excellent counsel. I know they are competent. And
4 from what they have said today, they are doing more
5 than you might expect from some counsel as far as
6 all the visits and the discussions.

7 You haven't met the standard, so I'm going
8 to deny your motion. Understanding that you want to
9 continue to have counsel, then, that's where we will
10 leave it, with Mr. Nicholson on board, and go
11 forward as I understand it to trial. All right?

12 THE DEFENDANT: Thank you, ma'am.

13 THE COURT: Mr. McGraw and Mr. Nicholson
14 and Ms. Heath, if there is nothing else, Mr. McGraw
15 is remanded to federal custody, and we will be in
16 recess.

17 (Court in recess at 10:29 a.m.)
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C E R T I F I C A T E

I, Shawnie Archuleta, CCR/CRR, certify
that the foregoing is a transcript from the record
of the proceedings in the foregoing entitled matter.

I further certify that the transcript fees
format comply with those prescribed by the Court and
the Judicial Conference of the United States.

This 20th day of May 2011.

s/Shawnie Archuleta
Shawnie Archuleta CCR No. 7533
Official Court Reporter
The Northern District of Texas
Dallas Division

My CSR license expires: December 31, 2011

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